IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2609 OF 2004

Kashinath Namdeo Lalage..... Petitioner.

Versus

Bhaskar Atmaram Thange..... Respondent.

Mr.M. D. Angal for the Petitioner.

Mr. S.M.Oak for the Respondent.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 28TH SEPTEMBER, 2004.

P.C.:

Heard Advocate for the petitioner. Perused record.

2. The petitioner challenges the concurrent finding arrived at by both the courts below in favour of the respondent landlord while ordering eviction of the petitioner on the ground of default in payment of rent.

3. The only defence raised by the petitioner in answer to the suit for eviction on the ground of default in payment of rent was that the property belonged to his father-in-law Santu Gaikar and that the petitioner is the tenant of his father-in-law. The said defence was raised on the basis of the suit which was pending between Santu Gaikar and respondent herein wherein Santu Gaikar had claimed that he had acquired title to the suit property by way of adverse possession. Santu has succeeded in establishing his case before the trial court. However, the appellate court has set aside judgment of the trial court and dismissed the claim of Santu Gaikar.

4. Considering failure on the part of Santu to establish the ownership right and that being the only defence raised by the petitioner to deny the landlord - tenant relationship between the respondent and the petitioner, both the courts below on analyses of the evidence decreed the suit in favour of the respondent. It is sought to be contended on behalf of the petitioner that none of the counterfoil of the receipts issued on payment of rent bear signature of

the petitioner. Undisputedly, neither it was the case of the respondent landlord that it was a practice to obtain the signature of the tenant on the counterfoil of the receipt issued on payment of the rent nor that was a case pleaded by the petitioner. In the absence of any plea specifically being raised in that regard merely because some evidence on record disclose that there was no signature obtained by the respondent landlord on the counterfoil of the receipt, it cannot be presumed that there was no relationship of landlord and tenant between the respondent and the petitioner. As there is neither any illegality disclosed in either of the judgments passed by the courts below, nor the findings are perverse nor they are contrary to the materials on record, the petitioner has made out no case for interference with the impugned judgments in the exercise of jurisdiction under Article 227 of the Constitution of India. Hence, the petition is rejected.

5. At the oral request of the learned Advocate for the petitioner, time to vacate the premises is extended till 31st January, 2005, subject to the

petitioner along with all the major persons residing in the premises filing undertaking before the Registrar (Judicial) of this Court assuring that they will deliver the vacant and peaceful possession of the suit premises on or before 31st January, 2005 and will not induct any third person nor create any third party interest therein till then. The undertaking to be filed within three weeks from today.

6. Issuance of certified copy expedited.

(R.M.S.KHANDEPARKAR, J.)